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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/963,352

09/26/2001

Stephen Hershey

PD-201166

8271

7590

09/15/2005

Hughes Electronics Corporation
Patent Docket Administration
P.O. Box 956
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EXAMINER

LEVITAN, DMITRY

ART UNIT

PAPER NUMBER

2662

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 09/963,352 | Applicant(s) HERSHEY, STEPHEN | |
| | Examiner Dmitry Levitan | Art Unit 2662 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-26, 33 and 34 is/are allowed.
- 6) ☒ Claim(s) 1, 27, 30-32 and 35 is/are rejected.
- 7) ☒ Claim(s) 2-6, 28 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

1. The disclosure is objected to because of the following informalities: text on page 1 contains XXX,XXX, reserved for the Provisional Application number.
2. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.
3. References listed in the disclosure are not considered. If applicant believes that some references are pertinent to the disclosed invention, they should be provided in an IDS form with copies of the References.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-6, 27-32 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 27, 32 and 35 limitation “transmitting the calculated unsatisfied demand (UD) value over the data link from the terminal to a base station at a time uncorrelated with a time at which new demand for the data link resource is detected by the terminal” is unclear, because calculated unsatisfied demand (UD) value could be interpreted as a new demand for the data link resource detected/calculated by the terminal. Therefore transmitting UD value at a time uncorrelated to the UD value (itself) is not understood.

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Claims 30 and 31 are unclear, because it is not understood if these claims are independent or dependent claims.

Claims 30 and 31 are rejected as hybrid claims embracing both product or machine and process (See Ex parte Lyell 17 USPQ2d 1548).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1 and 32 are rejected (as best understood) under 35 U.S.C. 102(e) as being anticipated by Naim (US 2002/0093953 A1).

Naim teaches a method and apparatus for demanding a data link resource (link bandwidth between a mobile station 14 and base station 12 on Fig. 1) in a communication network (wireless network on Fig. 1 and [0023]), comprising:

Calculating an unsatisfied demand (UD) value for the data link resource at the terminal (calculating a data queue length at the mobile device, shown as step 100 on Fig. 4 and data queue measure 24 on Fig. 2 [0029]); and

Transmitting the calculated UD value over the data link from the terminal to a base station (transmitting the queue length to the base station demanding additional bandwidth allocation as shown on step 106 of Fig. 4 [0034] utilizing transmitter 30 on Fig. 2 [0030]) at a

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time uncorrelated with a time at which new demand for the data link resource is detected by the terminal (the queue length transmission is unrelated to detecting a new demand by the mobile device).

Allowable Subject Matter

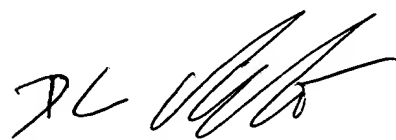
8. Claims 7-26, 33 and 34 are allowed.
9. Claims 27-29 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
10. Claims 2-6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Levitan whose telephone number is (571) 272-3093. The examiner can normally be reached on 8:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'DL' followed by a stylized name.

Dmitry Levitan
Patent Examiner.
09/13/05